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10/19/95

William Canton
Secretary, Federal Communications Commission
1919 M. St., N.W.
Room 222
Washington, DC 20554

SUBJECT: CC Docket 92-90

Dear Mr. Canton,

Enclosed for filing are the original and nine copies of my eight pages of comments on the MCI Petition for Clarification and/or Reconsideration of Commission Order Finalizing Rules Implementing The Telephone Consumer Protection Act. I am a member of the general public.

Please make these comments part of the official record.

Sincerely,



Russell R. Smith

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the matter of)
Rules and Regulations) cc Docket No. 92-90
Implementing the Telephone)
Consumer Protection Act)
of 1991)

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COMMENTS ON MCI PETITION FOR CLARIFICATION AND/OR
RECONSIDERATION OF COMMISSION ORDER FINALIZING RULES
IMPLEMENTING
THE TELEPHONE CONSUMER PROTECTION ACT

I request the Commission deny MCI's request for the Commission not to require the fax broadcaster's identity to appear on the top or bottom margin of at least the first page of a fax. I have included an appendix entitled *Complaints Filed Under the Telephone Consumer Protection Act* as part of my comments.

The reasons for my request are:

1. Table A of the attached appendix shows that of the 1,369 written complaints filed with the Commission for violations of the Telephone Consumer Protection Act (TCPA), and entered into the Commission's TCPA database, approximately 40% are for Fax transmissions. The 'Solicitations (general)' category may also contain some fax complaints. The Commission TCPA complaint database identifies the entity the complaint was filed against in only approximately 15% of the fax complaint cases. Many of these cases are due to lack of sufficient identifying information supplied by the sender. Consumer confusion is not from too much information as MCI contends. The confusion is over not enough information supplied to the consumer.

2. The consumer's options when seeking to enjoin TCPA fax violations are limited.

Neither the Commission nor State attorneys general offices have sufficient resources to investigate the majority of these alleged violations and take legal action against violators. Also, the Commission's authority, as well as a consumer's complaint appeal rights for complaints filed with the Commission, are limited if the alleged violator is not a common carrier.¹ The Commission has not taken any formal action against any entity for violations of the TCPA. There are no cases known to the Commission where a civil suit has been filed by an attorney general of a State under 47 USC 227 (f)(1) for violations of the TCPA. The only viable option for consumers to enjoin violations of the TCPA and recover damages is to exercise the Private Rights of Action under 47 USC 227(b)(3) and (c)(5). Being able to determine the fax broadcaster's identity may allow consumers to trace unwanted faxes through the broadcaster when the identity of the entity being represented is not clear.

3. The requirement for at least two identities to appear on the fax clearly conforms with the Commission's rules. 68.318(c)(3) of the Commission's rules requires the identification of the fax broadcaster on the top or bottom margin of at least the first page and 64.1200(e)(iv) requires the identity and the address and/or telephone number of the entities being represented to be contained within the body of the fax.

4. The fax broadcaster has the option to print a disclaimer so they are not linked to the content of the fax. This is currently done by many television and radio broadcasters.

¹ See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order at 55, footnote 89.

Consumers usually do not have the option of stopping unwanted faxes before they are sent.

Therefore, I request the Commission to continue to require the identification of the fax broadcaster to appear on the top or bottom margin of at least the first page² and to require the identity, with address and/or telephone number, of the entities being represented in the fax transmission³ so the consumer may contact these entities to request to be placed on their do-not-call list⁴ as well as the do-not-call list of affiliated entities (where applicable)⁵ and/or request a copy of these entities' written policy for maintaining a do-not-call list.⁶

² 47 CFR 68.318(c)(3)

³ 47 CFR 64.1200(e)(iv)

⁴ 47 CFR 64.1200 (e)(iii) and (e)(vi)

⁵ 47 CFR 64.1200 (e)(v)

⁶ 47 CFR 64.1200(e)(i)

APPENDIX

**COMPLAINTS FILED UNDER THE
TELEPHONE CONSUMER PROTECTION ACT**

On Friday October 13, 1995 I conducted an inspection of the complaints filed under the Telephone Consumer Protection Act (TCPA) at the Federal Communications Commission (FCC) , Common Carrier Bureau, Informal Complaints and Public Inquiries Branch in Washington, DC. I reviewed the computer database printout of 1,369 written complaints filed under TCPA. In addition, I reviewed approximately 50 case files that included all documentation related to each case. I would like to thank the Commission for the tremendous amount of assistance provided to me in this research.

BACKGROUND

I am having difficulty when I request telephone solicitors to comply with the minimum standards for conducting such solicitations.⁷ The problems include failure to: place consumers on a do-not-call list at the time the request is made; have a written policy, available upon demand, for maintaining a do-not-call list; identify the name and address and/or telephone number of the entity being represented; and notify affiliated entities to place me on these affiliated entities' do-not-call list when I reasonably would expect them to be included given the identification of the caller and the product being advertised. My goal of this inquiry is to determine if filing an FCC complaint is an effective method to enjoin these violations and recover damages.

⁷ 47 CFR 64.1200(e)

ENFORCEMENT

The enforcement options for these complaints is complicated by the fact that most of the entities named in the complaints are not common carriers.⁸ The only method of enforcement used by the Commission is under the Informal Requests for Commission Action.⁹ The alleged offenders are sent a certified letter asking for evidence of compliance with TCPA. These letters are not sent for many months after the complaint is received in many cases. It also appears that no action was taken against the companies who refused to supply Congress with their written policy for maintaining a do-not-call list¹⁰.

COMPLAINTS

The approximate breakdown of the complaints is shown in Table A. The numbers were counted by hand so the table contains minor errors. The exact figures may be obtained through the Commission. The numbers show the Commission's TCPA complaint database has not identified the entity the complaint was filed against in approximately 88% of the cases. Discussions with Commission employees and review of the case files revealed a variety of reasons for this. These reasons include: sufficient information was not supplied by the complainant, the Commission did not have sufficient resources to investigate the information that was provided, obviously false information provided by the telemarketer to the complainant in order to obtain a credit card number, no

⁸ See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order at 55, footnote 89.

⁹ 47 CFR 1.41

¹⁰ See *Report Card on Compliance with the Telephone Consumer Protection Act of 1991 by Top Companies in the Telemarketing Industry*, a majority staff report, U.S. House of Representatives, July 1994 at 4-5.

identification supplied by the telemarketer, and the large number of complaints filed with the Commission's Common Carrier Bureau Informal Complaints and Public Inquiries Branch limits the amount of time that can be spent handling the TCPA complaints. This Office also handles a large number of complaints not related to the TCPA. The Commission is now in the process of destroying complaints more than six months old.

CONCLUSION

The Commission's complaint process is providing good information on the type of complaints filed. However, considering some of the situations I have encountered with telemarketers refusing to comply with the TCPA, the telemarketing industry is aware that the Commission's complaint process will not result in any fines or penalties for violations of the TCPA.

TABLE A

	'93	'94	'95	Total	% of all complaints
Fax w/ no prior consent	31	300	187	518	38%
Fax w/no ID (part 68)	2	15	11	28	2%
Solicitations (general)	26	176	134	336	25%
Live-do-not-call request not honored	15	140	95	250	18%
Live-no prior consent	8	18	8	34	2%
No solicitor ID	1	7	2	10	<1%
Live-solicitation to business	5	28	9	42	3%
Time of day violation	1	19	8	28	2%
Sex solicitations	0	4	1	5	<1%
Automated calls to emergency #	5	0	0	5	<1%
Automat Tel. Dial Sys(ATDS)-Res.	7	44	31	82	6%
ATDS to multi-line business	1	7	0	8	<1%
ATDS to cellular/pager-charge	0	5	3	8	<1%
Line seizure-5 sec. rule	0	2	2	4	<1%
Line seizure business	0	3	0	3	<1%
Disclosure of do-not-call list	0	1	0	1	<1%
Solicitations from foreign countries	0	1	0	1	<1%
Definition of solicitation	1	0	0	1	<1%
TOTAL (exact, FCC supplied)	102	772	494	1,368	
Entities named in database	46	91	28	165	12%

	'93	'94	'95	Total
Fax complaints entities NOT }	10	263	189	462
named in database }	30%	83%	95%	85%

Respectfully submitted,



Russell R. Smith

Dated October 19, 1995